



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	State Board of Mental Health, Mental Retardation and Substance Abuse Services
<b>VAC Chapter Number:</b>	12 VAC 35-190-10 et seq.
<b>Regulation Title:</b>	Regulations Establishing Procedures for <del>Voluntarily Admitting</del> <u>the Voluntary Admission</u> of Persons Who Are Mental Retarded to State Mental Retardation Facilities
<b>Action Title:</b>	Amend the Regulations
<b>Date:</b>	October 21, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The regulations provide general criteria and procedures for admitting persons on a voluntary basis to residential training facilities for the mentally retarded that are operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department). These regulations were first promulgated in 1976. The proposed amendment revises provisions to require the case management community services board to be responsible for arranging admissions to and discharges from state training centers; updates definitions of terms; and generally updates the existing provisions to be consistent with current practice and statutory requirements. The proposed amendment also includes provisions for an applicant to seek reconsideration from the Commissioner of any decision to deny admission to a training center.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On October 3, 2002, the State Board for Mental Health, Mental Retardation and Substance Abuse Services adopted the proposed amended *Regulations for the Voluntary Admission of Persons who are Mentally Retarded to State Mental Retardation Facilities* 12 VAC 35-190-10 et seq. for final promulgation.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

Virginia's Office of the Attorney General advises that the Mental Health Mental Retardation and Substance Abuse Services (Board) has the authority to promulgate these regulations under *Virginia Code* §§ 37.1-10 and 37.1-65.1(B) and is required to do so.

*Virginia Code* § 37.1-10 confers authority to the Board to "...make, adopt and promulgate such rules as may be necessary to carry out the provisions of this title..." *Virginia Code* § 37.1-65.1(B) requires the Board to promulgate regulations establishing procedures and standards for approving admissions to facilities for the mentally retarded.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

Amendments to the existing regulations are necessary to describe the requirements and procedures for individuals requesting admission into a mental retardation training facility; to clearly define due process protections afforded to persons with mental retardation who are being admitted to a training center and to their families; and to assure consistency with statutory requirements, current practice and terminology. This amendment will protect the health and

welfare of Virginia citizens by ensuring that those who need admission will have accurate and legal guidance for seeking such admissions. With the amendments, the regulations will generally meet its major goals by (i) specifying the requirements that must be met to access voluntary admission in a mental retardation training center; and (ii) assuring that procedures for obtaining such services are minimally intrusive for individuals seeking services and their families with minimal cost to the training centers.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

Parts of regulations, which provide procedural guidance, have been clarified and updated to be consistent with statutory requirements and current practice and terminology. These revisions have been developed to be consistent with other relevant Agency regulations. The most substantive changes include:

1. Insertion of a new definition for “case management community services board (CSB)” and the revision of the provisions for admissions and discharges to indicate that the case management CSB is responsible for processing admissions and developing the discharge plan, as provided in 37.1-98 and 37.1-197.1 of the *Code of Virginia*;
2. Addition of definitions for “commissioner,” “discharge plan,” “guardianship,” and “legally authorized representative” which are needed to clarify the regulatory provisions;
3. Elimination of definitions for “clinical psychologist,” “less restrictive alternative,” “physician,” “respite care,” “responsible person,” and “transfers,” which are terms that are not used in the text of the regulations and are therefore unnecessary;
4. Revision of the definition for “facility” to clarify that state operated training centers for persons with mental retardation are the only type of facility that is included in the scope of these regulations;
5. Elimination of the current section 12 VAC 35-190-40 of these regulations describing the criteria for judicial certification for eligibility for admission to training centers which repeat criteria specified in state law;
6. Addition of procedures to request reconsideration from the Commissioner of any decision to deny a request for voluntary admission to a training center (new section 12 VAC 35-190-40).

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The changes are intended to clarify the requirements and procedures for voluntary admissions in accordance with the current law. These regulations have not been revised since they were promulgated in 1976. The provisions in the existing regulations are being amended to reflect current terminology and changes in the practice that have occurred since that time. By providing specific and accurate guidance, the amendment should reduce confusion and facilitate the process for requesting admissions and help promote timely discharges from state training centers, consistent with the current law. This should be advantageous to citizens who request such admissions, and to the CSBs and state facilities that process such applications for admission. The amendment should have no disadvantages to the public or the Commonwealth.

**Statement of Changes Made Since the Proposed Stage**

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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There have been no substantive changes made to the regulations since the proposed stage. Minor editorial changes were made in response to recommendations of the Office of the Attorney General.

**Public Comment**

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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The agency received one public comment requesting clarification of section 12 VAC 35-190-50 of the proposed regulations which specifies when a judicial proceeding may be initiated to certify eligibility for admission. This provision states that a judicial proceeding may be initiated only after a person is determined to be suitable for state facility admission by the facility director.

The agency does not recommend revising this provision. This provision conforms the requirements for admission to facilities for the mentally retarded as specified in the current Virginia Code at § 37.1-65.1.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This*

*statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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1. New terms, which are used in the regulations, have been defined at 12 VAC 35-190-10 for clarity including: “case management community services board,” “facility,” “commissioner,” “discharge plan,” “guardianship,” and “legally authorized representative.” The definition of “responsible persons” was deleted because this term is no longer used in the regulations and has been replaced with more specific references (i.e., legally authorized representative). In addition of definitions for “clinical psychologist,” “less restrictive alternative,” “physician,” “respite care,” “responsible person,” and “transfers,” were eliminated because they are not used in the text of the regulations and were therefore unnecessary;
2. 12 VAC 35-190-20 and 12 VAC 35-190-10 of these regulations, describing the criteria for judicial certification for eligibility for admission to training centers, have been deleted. Because the criteria are specified in state law, there is no need to restate this criteria for judicial certification in the regulations. By eliminating these criteria, the regulations should become less confusing.
3. 12 VAC 35-190-20.A and 12 VAC 35-190-30A have been revised to clearly reflect the responsibility of the case management CSB to process applications for voluntary admissions to training centers consistent with § 37.1-65.1 and § 37.1-197.1 of the *Code of Virginia*.
4. Specific provisions have been inserted at 12 VAC 35-190-40 for individuals and/or the case management CSB to seek reconsideration from the Commissioner of any decision to deny admission to a training center for voluntary admissions.
5. Other non-substantive language changes have been made throughout the regulation for clarity and consistency with the regulatory context and terminology.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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These regulations outline the process for individuals receiving services and their families to seek care and support to address individual needs. These regulations respect the authority and rights of families and legally authorized representatives in the education, nurturing and supervising

children and also allow individuals receiving services to assume personal responsibility. The regulations should have no impact on marital commitment or disposable family income.